

CRIMINAL REVISION APPLICATION NO. 30 OF 2001

Shri Rajesh Narvekar,
Narvekar Chambers,
Mapusa, Goa.

... Applicant.

versus

1. Shri Prasad @ Durga Prasad
Sainath Narvekar, unmarried,
of full age, r/o Near Football
Ground, Duler, Mapusa, Goa.

2. The State
(through Mapusa {Police}). ... Respondents.

Mr. Nitin Sardessai, Advocate for the Applicant.

Mr. Prasad Narvekar, Advocate for the Non Applicant No.1.

CORAM: P. V. HARDAS, J.

DATED: 7TH FEBRUARY, 2002.

ORAL JUDGMENT

This Criminal Revision Application has been filed by the Applicant who is the Original Complainant in Criminal Case No.225/1998/Ist.Addl, pending on the file of Judicial Magistrate, First Class at Mapusa. This Criminal Revision Application challenges the Order passed by the Additional Sessions Judge at Panaji, in Criminal Revision Application No.51/2000, dated 28th June, 2001, setting aside the Order dated 6th July, 2000, passed by the Judicial Magistrate, First Class, Mapusa, ordering framing of charge against the Non Applicant No.1/Original Accused for an offence punishable under Sections 379, 504, 506(ii) of the Indian Penal Code, and discharged the Non Applicant/Original Accused for the aforesaid offences.

2. The brief facts necessary for the decision of this Revision are as under:-

The Applicant herein, who is the Original Complainant, who lodged FIR No.246 dated 14.10.1997, set the ball rolling in respect of the prosecution of the Non Applicant/Original Accused. On the basis of the said First Information Report, the Mapusa Police Station investigated the said complaint and a charge-sheet against the Non Applicant/Original Accused came to be filed before the Judicial Magistrate, First Class, Mapusa, for an offence punishable under Section 392 of the Indian Penal Code. On an application moved by the prosecution, an additional charge under Sections 504 and 506 came to be added.

3. The Applicant/Complainant, had alleged in his report that the Non Applicant No.1/Accused had attacked him when he was at the staircase leading to his Office and had dashed the camera on the wall and thereafter ran away with the camera. It was also alleged by the Applicant/Complainant that the Non Applicant/Accused had abused him and had threatened to kill him while the Non Applicant/Accused was running away. It is also stated that a Civil Case regarding the property dispute is pending in the Court.

4. As submitted above, the prosecution moved an application contending that the Non Applicant/Accused had also committed an offence punishable under Sections 427, 504, 506 besides Section 392. The learned Judicial Magistrate, First Class, Mapusa, after hearing the prosecution and the Accused by his Order dated 6th July, 2000, partly allowed the application filed by the prosecution and ordered the framing of additional charge under Section 504 and the latter part of Section 506 of the Indian Penal Code. In the aforesaid Order, the learned Judicial Magistrate, First Class, Mapusa, also observed that a charge under Section 392 could not be framed but a charge under Section 379 of the Indian Penal Code could be framed against the Non Applicant/Accused.

5. The Non Applicant No.1/Accused being aggrieved by the Order of the learned Judicial Magistrate, First Class, Mapusa, ordering the framing of the charge under Sections 379, 504 and 506(ii) of the Indian Penal Code filed Criminal Revision Application No.51/2000 before the Additional Sessions Judge at Panaji. The learned Additional Sessions Judge at Panaji, by his Order dated 28th June, 2001, allowed the aforesaid Criminal Revision Application filed by the Non Applicant No.1/Accused and quashed the Order of the learned Judicial Magistrate,

First Class, Mapusa, ordering the framing of charge for an offence punishable under Sections 379, 504 and 506(ii) of the Indian Penal Code and discharged the Accused of the aforesaid offences. The Original Complainant, being aggrieved by the said Order of discharge of the Non Applicant No.1/Accused has filed the present Criminal Revision Application.

6. Mr. Nitin Sardessai, the learned Advocate appearing for the Applicant/Complainant herein has urged before me that the learned Additional Sessions Judge has exceeded his revisional jurisdiction in setting aside the Order of the learned Judicial Magistrate, First Class, Mapusa, by applying the test of proof beyond reasonable doubt while considering the material in the charge-sheet on a question whether prima facie the offences as alleged against the Accused have been made out. It is further urged that the Court while framing a charge has to only consider whether the material so placed by the prosecution is sufficient to raise a strong suspicion against the Accused in respect of the commission of an offence. According to the learned Advocate appearing for the Applicant, the Court at that stage is not required to examine the material as if it was appreciating the evidence of the prosecution at the conclusion of the trial. Thus, according to the learned Advocate appearing for the Applicant, the Additional

Sessions Judge, Panaji, while allowing the Revision has examined the material in the charge-sheet as if it was appreciating the evidence at the conclusion of the trial.

7. Mr. Prasad Narvekar, the learned Advocate appearing for the Non Applicant No.1/Accused has urged before me that the learned Additional Sessions Judge, Panaji, was perfectly justified in allowing the Revision. According to him, the learned Additional Sessions Judge, Panaji, was perfectly within his bounds in appreciating the material in the charge-sheet to hold that the material in the charge-sheet did not disclose the commission of the offence as alleged against the Non Applicant No.1/Accused.

8. Mr. Nitin Sardesai, the learned Advocate appearing for the Applicant has relied upon the Judgment of the Supreme Court in the matter of **Superintendent & Remembrancer of Legal Affairs v. Anil Kumar** reported in AIR 1980 SC 52. The Supreme Court at para 18 has observed thus:-

"It may be remembered that the case was at the stage of framing charges; the prosecution evidence had not yet commenced. The Magistrate had, therefore, to consider the above question on a general consideration of the materials placed before him by

the investigating police officer. At this stage, as was pointed out by this Court in *State of Bihar v. Ramesh Singh*, AIR 1977 SC 2018, the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged; may justify the framing of charge against the accused in respect of the commission of that offence".

9. Mr. Nitin Sardesai, the learned Advocate appearing for the Applicant has also placed reliance on a Judgment of the Supreme Court in **State of Maharashtra v. Som Nath Thapa** reported in AIR 1996 SC 1744. The Supreme Court at page 57 has held thus:-

"We do not think that the law permits us to find out at this stage as to which of the two versions given by two Inspectors is correct. We have said so because at the stage of framing of charge probative value of the statement cannot be gone into, which would come to be decided at the close of the trial. There is no doubt that if the subsequent statement be correct, Nakabandi was done not at the proper place, as that left Sai-Morba Road free

for the smugglers to carry the goods upto Bombay".

10. Mr. Prasad Narvekar, the learned Advocate appearing for the Non Applicant No.1/Accused has relied on a Judgment in the matter of **Union of India v. Prafulla Kumar Samal and another** reported in AIR 1979 SC 366. The Supreme Court at para 10 of the Judgment has observed thus:-

"The Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

In exercising his jurisdiction under Section 227 the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post-Office or a mouthpiece of

the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial".

11. He has also placed reliance on a Judgment of the Supreme Court in **Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and others** reported in 1990 Cri.L.J. 1869. The Supreme Court at para 7 has observed thus:-

"It seems well-settled that at the Sections 227-228 stage i.e. stage of framing the charge, the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case".

12. Perusal of the above Judgments of the Supreme Court clearly reveals that the Court at the time of framing of the charge has undoubtedly to apply its judicial mind to sift and weigh the evidence for the

limited purpose of finding out whether or not a prima facie case against the Accused has been made out. In other words, the Court has to, on perusal of the material, determine if the ingredients of the offence with which the Accused is charged are disclosed from the perusal of the material submitted by the prosecution. The Court cannot hold a roving enquiry and assess the probative value of the documents and the statements filed with the charge-sheet.

13. In the present case, the learned Additional Sessions Judge, Panaji, has relied on a Judgment of the Supreme Court in **State of Haryana v. Bhajan Lal** reported in AIR 1992 SC 604. This was a case where the Supreme Court was examining the powers of the High Court under Section 482 for quashing of the FIR. Reliance on this Judgment of the Supreme Court by the Additional Sessions Judge, Panaji was wholly misplaced. The Additional Sessions Judge, Panaji, after referring to the various statements and panchanama has recorded a finding which is reproduced below:-

"Though the complainant and the witnesses stated that the appellant ran away with the camera it is difficult to believe that the appellant before taking away the camera would bang the camera on the wall as stated by the complainant and the witnesses. It is difficult to

believe that the appellant if he had the intention of committing theft of the camera would bang the camera thereby running the risk of damaging it. No purpose is served for the appellant to bang the camera and at the same time take it away".

14. The learned Additional Sessions Judge, Panaji, has further recorded a finding which is reproduced below:-

"On the same evening a panchanama of scene of offence was prepared where cover of the camera was attached and on the next date on 15.10.97 a panchanama was prepared of attachment of camera from the shop of the appellant. There is no reference of the cover of the camera in the F.I.R. and it is strange that the cover of the camera was found by the police on the same night without the complainant referring to it".

15. The learned Additional Sessions Judge, Panaji, seems to have appreciated the material placed by the prosecution as if the Additional Sessions Judge, Panaji, was appreciating the evidence at the conclusion of the trial. He has judged the probative value of the statements of the witnesses and the documents submitted by the prosecution. This is precisely what is prohibited. At the time of framing of the charge, the Court has to sift and weigh the material for a limited purpose of finding out whether prima facie an offence is

disclosed. The Court cannot examine the pros and cons of the prosecution and record a finding about the probabilities of the prosecution case without the prosecution being given an opportunity of examining its witnesses. The Order of the learned Additional Sessions Judge, Panaji, discharging the Non Applicant No.1/Accused is thus unsustainable.

16. In the result, therefore, Criminal Revision Application No.30/2001 is allowed and the Order of the learned Additional Sessions Judge, Panaji, dated 28th June, 2001, in Criminal Revision Application No.51/2000 is hereby quashed and set aside and the Order of the learned Judicial Magistrate, First Class, Mapusa, dated 6th July, 2000, framing charge against the Non Applicant No.1 for offences punishable under Sections 379, 504 and 506(ii) of the Indian Penal Code is restored. The learned Judicial Magistrate, First Class, Mapusa, is directed to expeditiously decide the trial.

17. With these directions, Criminal Revision Application is allowed with no order as to costs.

(P. V. HARDAS)
JUDGE